IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4606 of 2001
With
CROSS OBJECTION No. 104 of 2002
In FIRST APPEAL No. 4606 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INS.CO.LTD. - Appellant(s)
Versus
SHARDADEVI WD/O RAMASHREE BABULAL GUPTA & 7 - Defendant(s)

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Appearance :
MR VIBHUTI NANAVATI for Appellant(s) : 1,
MR MEHUL S SHAH for Defendant(s) : 1 - 2,5 - 6.
MR SURESH M SHAH for Defendant(s) : 1 - 2,5 - 6.
SERVED BY RPAD - (N) for Defendant(s) : 3 - 4.
SERVED BY RPAD - (R) for Defendant(s) : 7 - 8.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 02/04/2012

ORAL JUDGMENT

1. By way of this appeal, the original opponent no. 3 – present appellant has challenged the judgement and award dated 16.07.2001 passed by the Motor Accident Claims Tribunal (Aux.) Bhuj, Kachchh in Motor Accident Claims Petition No. 193 of 1992 whereby the Tribunal directed the original opponents to jointly and severally pay a compensation of Rs. 5,96,200/- to the original claimants with interest at the rate of 9% per annum.

1.1 The original claimants have filed the cross objection seeking enhancement of the compensation amount.

2. The original applicants -present respondent nos. 1 to 6 who are the legal heirs of the deceased Shri Ramashree Babulal Gupta had filed a claim petition seeking compensation for Rs. 7,00,000/- for the death of Shri Ramashree in the accident which had occurred on 11.12.1991 opposite Hotel Natraj while he was repairing crane No. MMY 2105. At that time due to the negligence of the original opponent no.1 who was operating the crane, Shri Ramashree was electrocuted and which resulted in his death. The Tribunal after hearing the parties passed the aforesaid award.

4. Mr. Vibhuti Nanavati, learned advocate appearing for the appellant Insurance Company submitted that the Tribunal ought to have considered the negligence on the part of the deceased himself. He submitted that the accident occurred in a private place. Mr. Nanavati further submitted that the Tribunal committed an error in assessing the income of the deceased without any cogent evidence and thereby erred in granting more compensation. He submitted that the

multiplier adopted is also on higher side. He submitted that considering the age of the deceased the multiplier should have been 16 instead of 17.

5. Mr. Shah, learned advocate appearing for the original claimants supported the award of the Tribunal so far as liability of the appellants is concerned. He however submitted that the Tribunal has erred in awarding compensation which is on lower side. He submitted that the Tribunal has considered the income of the deceased on a lower side. He submitted that the Tribunal has not awarded adequate amounts under pain shock and suffering and funeral expenses.

6. Heard learned advocates for the parties. The Tribunal has gone through the evidence in detail and has come to the conclusion that the accident occurred on account of negligence of the original opponent no. 1. This court is in complete agreement with the same.

7. In the present case the Tribunal has assessed the income of the deceased at Rs. 33,600/- per annum. In my opinion considering the skilled work that the deceased used to perform and the salary slip which showed the income as Rs. 6000/- per month, the fair income which ought to have been assessed is Rs. 3000/- which comes to Rs. 36000/- per annum.

7.1 I am of the view that, looking to the age of the claimant which is 35 years, the multiplier of 17 awarded in the present case is on higher side. The issue with regard to multiplier is already settled by the decision of Apex Court in the case of **Sarla Verma & Ors Vs. Delhi Transport Corp. & Anr.**

Reported in 2009(6) SCC 121 wherein it is held as under:

> "The multiplier to be used should be as mentioned in column (4) of the Table (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

7.2 In view of the aforesaid decision, the just and proper multiplier would be 16 considering the age of the deceased as 35 years. Therefore the future loss of income would come to Rs. 5,76,000/-. The Tribunal has already awarded Rs. 5,71,200/-. Therefore an additional amount of Rs. 4800/- is required to be awarded. As regards the rest of the awards the same is just and proper and does not call for any interference.

8. Accordingly, appeal is dismissed. Cross Objection is partly allowed. The claimants shall be entitled to an additional amount of Rs. 4,800/- alongwith interest at 7.5% from the date of application till realisation. The award of the Tribunal is modified accordingly. No order as to costs.

(K.S. JHAVERI, J.)

Divya//